

736

**IN THE CIRCUIT COURT FOR
JEFFERSON COUNTY, ALABAMA**

WALTER A. BELL, as Commissioner
of the ALABAMA DEPARTMENT
OF INSURANCE,

Plaintiff,

v.

BLOUNT MEMORY GARDENS, LLC, an
Alabama limited liability company,
BRIGHTON CEMETERY, LLC, an Alabama
limited liability company, BROOKWOOD
CEMETERY, LLC, an Alabama limited
liability company, CEDAR OAK
CEMETERY, LLC, an Alabama limited
liability company, CRESTVIEW
CEMETERY, LLC, an Alabama limited
liability company, CULLMAN MEMORY
GARDENS, LLC, an Alabama limited
liability company, FOREST GROVE
MEMORY GARDENS & FUNERAL
HOMES, LLC, an Alabama limited liability
company, MARSHALL MEMORIAL
FUNERAL HOME, LLC, an Alabama
limited liability company, MARSHALL
MEMORIAL GARDENS, LLC, an Alabama
limited liability company, OAKLAND
CEMETERY, LLC, an Alabama limited
liability company, PINELAND MEMORIAL
PARK, LLC, an Alabama limited liability
company, RESTHAVEN MEMORIAL
PARK & FUNERAL HOME, LLC, an
Alabama limited liability company,
SUNRISE MEMORY GARDENS, LLC,
an Alabama limited liability company,
WILLIAMS-MCCRACKEN FUNERAL
HOME, LLC, an Alabama limited liability
company, and WILSON FUNERAL
HOME, LLC, an Alabama limited liability
company,

Defendants.



Civil Action No.
CV 05-6114

FILED IN OPEN COURT

This 27th day of January,
2006. *RLB*
HOUSTON L. BROWN, JUDGE

MOTION TO AMEND COMPLAINT

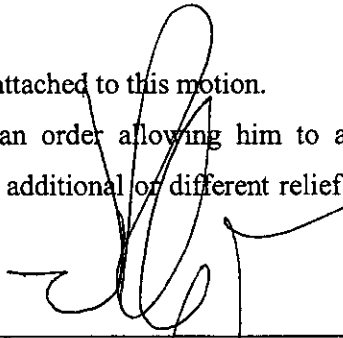
Pursuant to Alabama Rule of Civil Procedure 15(a), the plaintiff, Walter A. Bell ("Bell"), in his capacity as Commissioner of the Alabama Department of Insurance, asks this court to enter an order allowing him to amend the complaint filed to commence this civil action to add additional defendants and claims. In support of this motion, Bell makes the following allegations.

1. The claims asserted in the amended complaint involve the same statutes and transactions that are the subject of the complaint originally filed in this case.

2. The defendants to be added by virtue of the proposed amendment have consented to their addition to this case as defendants.

3. A copy of the proposed amended complaint is attached to this motion.

WHEREFORE, Bell asks this court to enter an order allowing him to amend the complaint originally filed in this case. Bell asks for any additional or different relief this court deems appropriate.



Vincent R. Ledlow
Assistant Attorney General

Ralph R. Norman III
Assistant Attorney General and
General Counsel

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
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CERTIFICATE OF SERVICE

I certify a copy of this document has been served on the parties or attorneys whose names and addresses are set forth below by depositing copies in the U.S. Mail, properly addressed with postage prepaid, this 27th day of ~~November~~ ^{January}, 200~~5~~⁶.

Jeffrey Keith Carder, Esq.
2018 Morris Avenue
Birmingham, Alabama 35203-4169



Of Counsel

IN THE CIRCUIT COURT FOR
JEFFERSON COUNTY, ALABAMA

WALTER A. BELL, as Commissioner
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OF INSURANCE,

Plaintiff,

v.

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PARK, LLC, an Alabama limited liability
company, KERBY FUNERAL HOME, LLC,
an Alabama limited liability company,
and OAK LAWN MEMORIAL
GARDENS, LLC, an Alabama limited liability
company,

Defendants.



Civil Action No.
CV 05-6114

FILED IN OPEN COURT

This 27th day of January,
2006.

HOUSTON L. BROWN, JUDGE

**AMENDED VERIFIED COMPLAINT FOR ENTRY OF A TEMPORARY
RESTRAINING ORDER, APPOINTMENT OF A RECEIVER, AND OTHER RELIEF**

The plaintiff, Walter A. Bell ("Bell"), in his capacity as Commissioner of the Alabama Department of Insurance (the "Department"), makes the following allegations to amend the complaint previously filed in this action to state and add claims against additional defendants Greenhaven Memorial Park, LLC ("Greenhaven"), an Alabama limited liability company, Henagar Memorial Park, LLC ("Henagar"), an Alabama limited liability company, Kerby Funeral Home, LLC ("Kerby"), an Alabama limited liability company, and Oak Lawn Cemetery, LLC ("Oak Lawn"), an Alabama limited liability company.

Parties and Nature of Action

1. Bell is Commissioner of the Alabama Department of Insurance. Pursuant to §27-2-7(2) of the Alabama Code, Bell is authorized to enforce the provisions of Title 27 of the Alabama Code (the "Insurance Code"). Section 27-2-7(7) of the Alabama Code authorizes Bell to invoke any legal, equitable, or special remedy to enforce the Insurance Code.

2. Greenhaven is a limited liability company organized and existing under the laws of the State of Alabama. Greenhaven's principal place of business is in Jackson County, Alabama.

3. Henagar is a limited liability company organized and existing under the laws of the State of Alabama. Henagar's principal place of business is in DeKalb County, Alabama.

4. Kerby is a limited liability company organized and existing under the laws of the State of Alabama. Kerby's principal place of business is in DeKalb County, Alabama.

5. Oak Lawn is a limited liability company organized and existing under the laws of the State of Alabama. Oak Lawn's principal place of business is in Jackson County, Alabama.

6. According to the records of the Alabama Secretary of State, an Alabama limited liability company known as "DRH LLC" ("DRH") is either the manager or managing member of each of the defendants. DRH controls and directs the operations of all of the defendants.

7. The defendants have violated the Alabama Preneed Funeral and Cemetery Act (the "Act") (ALA. CODE §§27-17A-1 through 56 (Cum. Supp. 2004)) by, among other things, **failing to place into trust in excess of \$1.02 million received from 575 consumers** for their purchases of funeral and cemetery merchandise and services.

8. This civil action is being brought pursuant to §§27-17A-17 and 27-32-6 of the Alabama Code. Through this civil action, Bell seeks the appointment of a receiver to take control of, administer, and eventually liquidate the defendants' assets for the benefit of their creditors, including individuals who purchased preneed funeral and cemetery merchandise and services from the defendants.

Claim

Alabama Preneed Funeral & Cemetery Act

9. Under the Alabama Preneed Funeral & Cemetery Act (ALA. CODE §§27-17A-1 through 56 (Cum Supp. 2004)) (the "Act"), persons who sell funeral or cemetery merchandise or services preneed must obtain a certificate of authority ("COA") from the Department before they can engage in such sales. A COA granted by the Department is valid for a period of one year after which the certificate holder must apply for renewal of that COA. The grant or renewal of a COA by the Department is conditioned upon, among other things, the applicant's ability to demonstrate it has sufficient financial strength and stability to continue operating its business and the applicant's compliance with all provisions of the Act.

10. The Act requires persons selling funeral or cemetery merchandise or services preneed to provide for the security of the funds received from consumers for such sales. The Act allows preneed certificate holders to discharge this obligation by funding preneed contracts through the sale of insurance policies, by placing certain specified portions of the funds so received into a trust approved by the Department, by, with the Department's prior approval, providing the Department with a surety bond in the amount of the certificate holder's outstanding preneed liabilities, or by, again with the Department's prior approval, providing the Department with a letter of credit in the amount of the certificate holder's outstanding preneed liabilities.

11. The Act provides the preneed contract executed by the consumer and the certificate holder set forth the manner in which the certificate holder will comply with the Act's security requirements. ALA CODE §27-17A-12 (Cum. Supp. 2004). In the contracts between the defendants and the consumers who purchased funeral and cemetery merchandise and services from them, the defendants represented to the consumers their funds would be kept secure by placing them into trust.

12. Pursuant to the Act, a certificate holder whose COA is not renewed is considered to be "inactive". Upon becoming inactive, such a certificate holder must collect and deposit into trust *all* funds paid toward preneed contracts sold. ALA. CODE §27-17A-16 (Cum. Supp. 2004).

13. Under the Act, cemeteries that charge a fee for burial are "endowment care cemeteries". Persons who operate endowment care cemeteries are required to place certain funds into an endowment care trust to provide for the maintenance of the cemetery property. Cemeteries in existence as of May 1, 2002, must place into trust a minimum of \$5,000.00 annually beginning on May 2, 2003, until the endowment care trust balance is \$25,000.00. Cemeteries formed after May 1, 2002, must immediately place into trust the entire \$25,000.00.

The Defendants' Violations of the Act

14. Greenhaven, Henagar, Kerby, and Oak Lawn were formerly owned by a Texas limited liability company known as Mike Graham & Associates, LLC ("Graham").

15. In early 2005, DRH applied to the Department for a COA. Through that application, the Department learned Greenhaven, Henagar, Kerby, and Oak Lawn had been sold by Graham to DRH and that DRH intended to register the defendants as "branches" under its COA.

16. Among other things, DRH's application for a certificate of authority revealed that despite their representation to the Department and consumers that the defendant limited liability companies would comply with the Act's security requirements by trusting consumer funds, no such funds had been trusted. In addition DRH's application revealed defendants Greenhaven, Henagar, and Oak Lawn had failed to properly fund their endowment care trust funds.

17. At or around the time DRH submitted its application for a COA and branch registration of Greenhaven, Henagar, Kerby, and Oak Lawn, Graham submitted applications for the renewal of the COA's held by each of these entities. The renewal applications submitted by Graham also revealed Greenhaven, Henagar, Kerby, and Oak Lawn had failed to properly trust consumer funds and that the defendants that are cemetery authorities had failed to properly fund endowment care trust funds.

18. In the fall of 2005, the Department hired the certified public accounting firm of Carr, Riggs & Ingram LLC ("CRI") to conduct an examination of a number of limited liability companies owned or formerly owned by Graham, including the defendants in this civil action, to determine the financial condition of those entities and the extent to which those entities were delinquent in their contributions to their funeral and cemetery merchandise and services trusts and endowment care trusts.

19. Because the information provided by Graham with regard to Greenhaven, Henagar, Kerby, and Oak Lawn only showed the financial condition of these entities through the date of their sale to DRH, the Department retained CRI to conduct an examination of the records of DRH and the defendants to gain a more complete and accurate understanding of the defendants' financial status and the extent to which they were not in compliance with the Act's trusting requirements.

20. CRI examined business records produced by Graham in response to a subpoena issued by the Department, business records at Graham's business premises, and records produced by the defendants in response to an examination warrant and subpoena. From its examination and analysis of these business records, CRI has produced a report setting forth the extent to which the defendants have failed to comply with the Act's security requirements. A true and correct copy of a spreadsheet setting forth CRI's conclusions is attached to this verified complaint as Exhibit "A".

21. CRI's examination reveals defendants Greenhaven, Henagar, and Oak Lawn are \$34,451.48 in arrears on deposits to their endowment care trusts. The extent to which each individual defendant is in arrears on these deposits is accurately reflected on Exhibit "A".

22. CRI's examination reveals defendant Kerby is \$664,757.06 in arrears on deposits to its funeral merchandise and services trusts. The exact nature of Kerby's arrearage is accurately reflected on Exhibit "A".

23. CRI's examination reveals the defendants are \$323,032.42 in arrears on deposits to their cemetery merchandise and services trusts. The extent to which each individual defendant is in arrears on these deposits is accurately reflected on Exhibit "A".

24. CRI's examination reveals that without the money that is supposed to be deposited into trust pursuant to the Act, the defendants do not have sufficient cash flow to pay their operating expenses.

Basis for Relief

25. The defendants have engaged in a pattern and practice of violating the Act by failing to deposit into trust in excess of \$1.02 million collected from consumers in the State of Alabama.

26. The defendants do not have the funds necessary to make the required deposits to their funeral and cemetery merchandise and services trusts and endowment care trusts.

27. In Bell's opinion, the defendants' continued operation would be hazardous to purchasers, beneficiaries, and the people of this state, thus requiring the appointment of a receiver for their business pursuant to §27-17A-17(b) of the Alabama Code.

28. The defendants are insolvent, thus requiring the appointment of a receiver for their businesses pursuant to §§27-17A-17(b) and 27-32-6(1) of the Alabama Code.

29. The defendants have willfully violated laws of this state, thus requiring the appointment of a receiver for their businesses pursuant to §§27-17A-17(b) and 27-32-6(6) of the Alabama Code.

30. The defendants' conduct and financial situation establishes there is a risk of immediate and irreparable injury, loss, and damage to consumers if this court does not appoint a receiver without notice to the defendants.

31. The entry of a temporary restraining order would enable the receiver to maintain the *status quo* between the parties, would allow the receiver to examine and report to the court the status of the business pending a hearing for a preliminary injunction, and would prevent a loss or dissipation of the assets of the defendants.

WHEREFORE, Bell asks this court to:

(A) enter a temporary restraining order, in the form attached to this Complaint as Exhibit "B", appointing a receiver for the to take custody and control of the business and assets of the defendants for the purpose of maintaining and preserving them pending a hearing on the merits of this civil action;

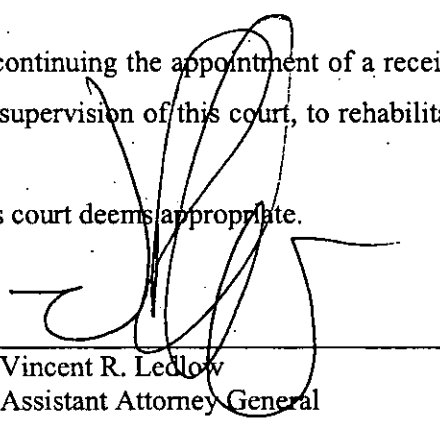
(B) setting this matter for a hearing on a preliminary injunction at the earliest possible date but not later than ten days after entry of the temporary restraining order;

(C) after a hearing on the merits of this case, entering a preliminary injunction directing the receiver to continue to maintain custody and control over the business and assets of the defendants subject to and in accordance with the supervision and orders of this court;

(D) setting this matter for a trial on the merits;

(E) after a trial on the merits, enter a judgment continuing the appointment of a receiver and authorizing the receiver, pursuant to the orders and supervision of this court, to rehabilitate, liquidate, or dissolve the business; and

(F) granting any additional or different relief this court deems appropriate.



Vincent R. Ledlow
Assistant Attorney General

Ralph R. Norman III
Assistant Attorney General and
General Counsel

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
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VERIFICATION OF MAC STAGNER

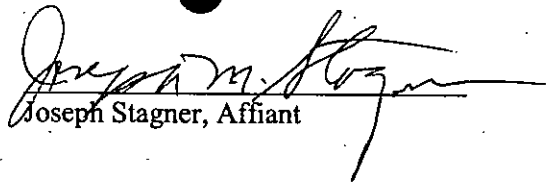
STATE OF ALABAMA)
MONTGOMERY COUNTY)

The affiant appeared before me, the undersigned authority. After first being sworn by me, the affiant gave the following testimony under oath.


1. My name is Joseph Stagner. I am over the age of nineteen years and am of sound mind. Unless otherwise noted, I have personal knowledge of the facts to which this verification applies. The facts to which this verification applies are true and correct.

2. I am a Consumer Specialist for the Life & Health Division of the Alabama Department of Insurance. I am executing this verification in that capacity and in support of this complaint seeking a temporary restraining order, the appointment of a receiver, and for other relief.

3. I have reviewed the allegations in paragraphs fourteen through seventeen of the complaint. The allegations in those paragraphs are true and correct.


Joseph Stagner, Affiant

SWORN TO AND SUBSCRIBED BEFORE
me this 26th day of January, 2006.


Notary Public
My commission expires: 4/13/09

VERIFICATION OF MICHAEL MADDUX

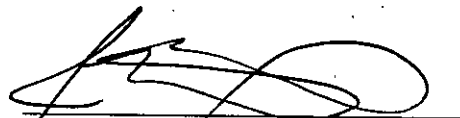
STATE OF ALABAMA)
HOUSTON COUNTY)

The affiant appeared before me, the undersigned authority. After first being sworn by me, the affiant gave the following testimony under oath.

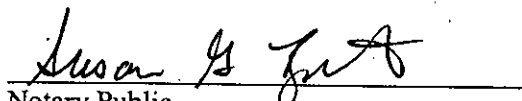
1. My name is Michael Maddox. I am over the age of nineteen years and am of sound mind. Unless otherwise noted, I have personal knowledge of the facts to which this verification applies. The facts to which this verification applies are true and correct.

2. I am a certified public accountant and a certified fraud examiner. I am also a partner with the certified public accounting firm of Carr, Riggs & Ingram LLC. I am executing this verification in that capacity and in support of this complaint seeking a temporary restraining order, the appointment of a receiver, and for other relief.

3. I have reviewed the allegations in paragraphs eighteen through twenty-four of the complaint. The allegations in those paragraphs are true and correct.


Michael Maddox, Affiant

SWORN TO AND SUBSCRIBED BEFORE
me this 17th day of January, 2006.


Notary Public
My commission expires: My Commission Expires 07-26-2009

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JEFFERSON COUNTY, ALABAMA

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PARK, LLC, an Alabama limited liability
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Civil Action No.
CV 05-6114

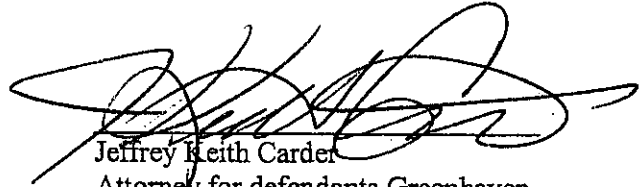
FILED IN OPEN COURT

This 27th day of January,
2006.

HOUSTON L. BROWN, JUDGE

**NOTICE OF APPEARANCE, WAIVER OF SERVICE, AND CONSENT TO ENTRY OF
PRELIMINARY INJUNCTION**

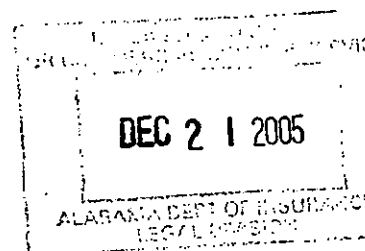
The undersigned hereby enters his appearance as counsel of record for defendants Greenhaven Memorial Park, LLC, Henagar Memorial Park, LLC, Kerby Funeral Home, LLC, and Oak Lawn Memorial Gardens, LLC. Pursuant to Alabama Rule of Civil Procedure 4(h), these defendants hereby acknowledge receipt of a copy of the amended complaint filed in this civil action and waive service of the summons and complaint on them. These defendants also consent to entry of a preliminary injunction against them on the same terms and conditions as that previously entered by the court against those entities who were defendants in this case prior to their inclusion as defendants.



Jeffrey Keith Carder
Attorney for defendants Greenhaven
Memorial Park, LLC, Henagar
Memorial Park, LLC, Kerby Funeral
Home, LLC, and Oak Lawn Memorial
Gardens, LLC

JEFFREY KEITH CARDER, ESQ.

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Defendants.

Civil Action No.
CV 05-6114

FILED IN OPEN COURT

This 27th day of January
2006
HOUSTON L. BROWN, JUDGE

ORDER

This matter came before the court on the Motion to Amend Complaint (the "Motion" and the "Amended Complaint", respectively) filed by the plaintiff, Walter A. Bell ("Bell"), in his capacity as Commissioner of the Alabama Department of Insurance (the "Department"), and the Notice of Appearance, Waiver of Service, and Consent to Entry of Preliminary Injunction (the "Notice") filed by Greenhaven Memorial Park, LLC, Henagar Memorial Park, LLC, Kerby Funeral Home, LLC, and Oak Lawn Memorial Gardens, LLC (the "Additional Defendants"). This court has considered the allegations in the Motion, the Amended Verified Complaint that is the subject of the Motion, and the Notice and has determined that, for good cause shown, the Motion should be **GRANTED**, and Bell's Amended Complaint is hereby **ALLOWED**.

In addition, pursuant to the Amended Complaint and the Notice, this court finds that the following preliminary injunction is due to be and hereby is entered.

1. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, the Additional Defendants and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby restrained and enjoined from taking, removing, concealing, selling, encumbering, lending, damaging, destroying, or otherwise disposing of any and all property, real, personal, and otherwise, owned, leased, or used by the Additional Defendants in connection with the sale of funeral or cemetery merchandise or services as those terms are defined in the Act.

2. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, the Additional Defendants and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby restrained and enjoined from taking, spending, transferring, concealing, lending, or otherwise disposing of any money or funds, whether in the form of cash, checks, debits to accounts, credit cards, lines of credit, loans, letters of credit, extensions of credit, accounts, obligations, debts, credits, proceeds from the sale of goods or services, or any other form whatsoever owned, claimed, or used by the Additional Defendants in connection with the sale of funeral or cemetery merchandise or services as those terms are defined by the Act.

3. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, the Additional Defendants, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby restrained and enjoined from concealing, hiding, transferring, altering, amending, removing, destroying, or otherwise disposing of any and all business and financial information, records, and documents pertaining to, relating to, or reflecting, in any way, the business and

financial affairs of the Additional Defendants with regard to sales of funeral or cemetery merchandise and services as those terms are defined in the Act.

4. Pursuant to §§27-32-1 through 41 and 27-2-53 of the Alabama Code, Denise Azar ("Azar"), Chief of the Receivership Division of the Department, is hereby temporarily appointed to be the receiver of the Additional Defendants. Azar is directed and is authorized to immediately take possession of the assets of the Additional Defendants related to the sale of funeral or cemetery merchandise and services and shall administer those assets under the orders of this court for the purpose of attempting to dissolve, liquidate, and conserve them. Azar is further directed and authorized to investigate the business and financial affairs of the Additional Defendants as they relate to the sale of funeral or cemetery merchandise and services and to report the results of this investigation to this court.

5. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, the Additional Defendants, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby restrained and enjoined from interfering with, hampering, slowing, obstructing, or otherwise impeding Azar and her deputies, employees, agents, and others acting under her direction or control from discharging their duties and carrying out their responsibilities as receiver.

6. Any and all banks, credit unions, brokerage firms, and any and all financial institutions of any kind, character, or nature whatsoever with which the Additional Defendants have accounts or deposits are hereby authorized and directed to provide Azar with any and all information she might request concerning such accounts or deposits for any period of time Azar deems necessary.

7. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, the Additional Defendants and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby restrained and enjoined from withdrawing funds from, writing checks on, or otherwise spending, transferring, or drawing against funds located in any account or deposit of which the Additional Defendants are owners that are connected, in any way with the sale of funeral or cemetery merchandise or services **except** in accordance with specific guidelines to be established by Azar in her discretion.


8. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, the Additional Defendants and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, and any and all other individuals and entities are hereby restrained and enjoined from drawing on, charging on, charging against, or otherwise

utilizing any letter of credit, line of credit, credit account, credit card, or otherwise incurring either short term or long term debt that is, in any way, connected with the sale of funeral merchandise or services **except** in accordance with specific guidelines to be established by Azar in her discretion.

9. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, all persons and other legal entities, except the plaintiff, are hereby temporarily restrained and enjoined from making claims or commencing or further prosecuting any actions in law or equity or administrative proceedings except in this court, from obtaining any preferences, judgment, attachments, or other liens against any of the property, personal or real, of the Additional Defendants, from commencing or continuing any action in the nature of an attachment, garnishment or execution against any of the property, real or personal, of the Additional Defendants, or from making any levy, garnishment, or execution against any of the property, real or personal, of the Additional Defendants.

10. The Additional Defendants are hereby directed to pay the costs of this action and any further proceedings related to a receivership, including reasonable attorney's fees, and costs and expenses involved therein.

Done this 27th day of January, 2006


Houston L. Brown
Circuit Judge